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PATENT
SY01106 KQ1 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICIAL

In re Application of:

MARTHA A. WILD ET AL:

For:
RECOMBINANT INFECTIOUS
LARYNGOTRACHEITIS VIRUS
AND USES THEREOF

Serial No.: 09/993,777
Filed: November 6, 2001

Examiner: Z. LUCAS

Group Art Unit: 1648

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Mail Stop: Petition

REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.705 (b)
OF THE PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b)
INDICATED IN THE NOTICE OF ALLOWANCE

Sir:

The Applicants request reconsideration of the patent term adjustment of zero (0) days indicated in the Notice of Allowance of May 24, 2004, for the above-identified application. For the reasons provided below, the Applicants further request that the patent issuing from the above-identified patent application be afforded a patent term adjustment of **nine (9)** additional days. For the USPTO's convenience, the Applicants enclose a hard copy of the Analysis Summary Report compiled by a commercial software program that contains the Applicant's determination of the patent term adjustment.

In accordance with 37 C.F.R. §1.702, the above-identified application was filed after May 29, 2000 and therefore, is eligible for patent term

Serial No.: 09/993,777

adjustment under 35 U.S.C. §154(b). The Notice of Allowance has been mailed and the Issue Fee has not been paid yet.

(1) Please charge the fee of \$200.00 set forth in 37 C.F.R. § 1.18(e) to Deposit Account No. 19-0365. A Fee Transmittal Form is enclosed.

(2) The Applicants provide a statement of facts regarding the correct patent term adjustment as follows:

(i) The patent term adjustment should be **nine (9)** additional days. The Applicants enclose a hard copy of the Analysis Summary Report compiled by a commercial software program that contains the Applicants' determination of the patent term adjustment. In short, the net adjustment credits were 106 days and the net adjustment debits were 97 days, making the net adjustment 9 days.

(ii) The relevant dates as specified in §§ 1.703(a) through (e) for which the adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are:

- The Applicants filed the above-identified application on **November 6, 2001** under 35 U.S.C. § 111(a). The USPTO mailed the first notification under 35 U.S.C. §132 as a Restriction Requirement on **March 25, 2003**. Therefore, the Office failed to mail a notification under 35 U.S.C. §132 or a notice of allowance under 35 U.S.C. §151 within fourteen months of the application filing date, as required by 37 C.F.R. § 1.702(a)(1), resulting in **seventy-eight (78)** credit days [37 C.F.R. §1.703(a)(1)].
- The Office mailed a notice of allowance on **May 24, 2004** in response to Applicants' reply under 37 CFR § 1.111, that the Office received on **January 20, 2004**. This was more than four months following the receipt of the reply resulting in **four (4)** credit days. [37 C.F.R. §1.703(a)(2)].

Serial No.: 09/993,777

- The projected date of issuance of the above-identified patent application is calculated to be **November 30, 2004**, whereas three (3) years after the date that the application was filed under 35 U.S.C. § 111(a) is **November 6, 2004**, resulting **twenty-four (24)** credit days [37 C.F.R. §1.703(b)].

No time was consumed by continued examination, an interference proceeding, imposition of a secrecy order, review by the Board of Patent Appeals and Interferences or delay in processing of the application requested by the applicants for the above-identified application. If the application issues earlier or later than November 30, 2004, then the exact number of credit days will be fewer or greater, respectively.

- The patent term adjustment is **nine (9)** additional days calculated by subtracting the **ninety-seven (97)** debit days (see below) from the sum of the one hundred and six (106) credit days. [37 C.F.R. §1.703(f)].


(iii) The patent is not subject to a terminal disclaimer.

(iv) In spite of due care, the Applicants were unable to respond within three months to the non-final Office Action mailed on **July 15, 2003**. The Office received the Reply to the non-final Office Action on January 20, 2004, resulting in **ninety-seven (97)** debit days [37 C.F.R. §1.704(b)].

Serial No.: 09/993,777

No additional fees are believed to arise due to this filing, however, if any additional fees are required, the Commissioner is hereby authorized to charge any required fees to Deposit Account No. 19-0365.

Schering-Plough Corporation
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August 23, 2004



Analysis Summary Report

APPLICATION INFORMATION			
Docket Number:	SY01106KQ1	Analysis Generated:	07/20/2004 01:52:03 PM ET
Application Number:	09/993,777	User Name:	Blinka, Thomas
Filing Date:	11/06/2001	Firm/Company Name:	Schering-Plough Corporation
Title/Inventors:		Attorney/Agent Comments:	M. Davis

ANALYSIS SUMMARY	
Earliest Referenced Application Date:	09 / 24 / 1993
Filing Date (US National Application):	11 / 06 / 2001
Net Adjustment Credits:	106 Days
Net Adjustment Debits:	97 Days
Net Patent Term Adjustment:	9 Days
ALPA Patent Term End Date:	10 / 03 / 2013 (1)

(1) Assumes payment of all maintenance fees and no intervening acts. Terminal disclaimer(s) filed in this case, if any, may reduce the term. Without adjustment, the term would end on 09/24/2013.

PATENT APPLICATION SUMMARY						
Item	Item Involved	Related Party	Excluded Date	Debit Date	Credit Date	
A Filing Date under 35 USC 111(a) (US National Application) 11/06/2001	14-Month PTO First Action PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(1), 1.703(a)(1).	First PTO Action: 03/25/2003 Restriction / Election-of-Species	0	0	78	
B Filing Date under 35 USC 111(a) (US National Application) 11/06/2001	3-Year PTO Issue of Patent PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. 35 USC 154(b)(1)(B); 37 CFR 1.702(b), 1.703(b). You have elected to analyze this rule under the PTO Interpretation. Under this interpretation, the last day of the three year period is 11/06/2004. Both interpretations produce the same result.	Issue Date: 11/30/2004 Issue Date	0	0	24	
C Notice of Omitted Items 02/27/2002	3-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.	Applicant Response: 04/03/2002 Response to Notice to Comply with Sequence Disclosures	0	0	0	

D 03/25/2003 Restriction / Election-of-Species	3-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.	Applicant Response: 04/28/2003 Response to Election-of-Species / Restriction Filed	0	0	0
F 04/28/2003 Response to Election-of-Species / Restriction Filed	4-Month PTO Response to Applicant Reply PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2), (3).	PTO Response: 07/15/2003 Non-final Action	0	0	0
F 07/15/2003 Non-final Action	3-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.	Applicant Response: 01/20/2004 Reply after Non-final Action under 37 CFR 1.111	0	97	0
G 01/20/2004 Reply after Non-final Action under 37 CFR 1.111	4-Month PTO Response to Applicant Reply PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2), (3).	PTO Response: 05/24/2004 Notice of Allowance under 35 USC 151	0	0	4

Docket Number: SY01106KQ1

Page 3 of 4

07/20/2004 01:52:03 PM ET

3-Month Applicant Response to Notice or Action				
08/24/2004 Notice of Allowance under 35 USC 151	Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(i); 37 CFR 1.704(b).	Applicant Response: 08/24/2004 Issue Fee Payment under 35 USC 151	0	0
08/24/2004 Issue Fee Payment under 35 USC 151	Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.			
4-Month PTO Issue of Patent				
	PTO must issue a patent not later than 4 months after the date on which the issue fee was paid under 35 USC 151 and all outstanding requirements were satisfied. The period of adjustment (credits) begins on the day after the date that is 4 months after the date the issue fee was paid and all outstanding requirements were satisfied and ends on the day the patent issues. 35 USC 154(b)(1)(A)(v); 37 CFR 1.702(a)(4), 1.703(a)(6).	Issue Date: 11/30/2004 Issue Date	0	0
Total Exclusion, Debit, and Credit Days			0	97
Overlap Days			0	0
Net Exclusion, Debit, and Credit Days			0	97
Net Patent Term Adjustment Days				106
The term of this patent ends on 10/03/2013 (2)				
(2) Assumes payment of all maintenance fees and no intervening acts. Terminal disclaimer(s) filed in this case, if any, may reduce the term. Without adjustment, the term would end on 09/24/2013.				
			9	